

Biocriteria & Excellent Tier

Questions/Concerns:

- If a waterbody is added to the impaired waters list because it is not meeting a biocriterion threshold (General or Excellent), what is the implication for a discharger to that water?
- If a waterbody attains Excellent Tier biocriteria & is therefore classified as Excellent Tier, what if it later declines due to reasons other than a permitted discharge (for example, what if agriculture increases phosphorus levels that lead to a decline)? Would that then impact permit limits?
- There is also a concern about future number of impaired waters increasing due to establishing Excellent Tier.

If a waterbody is not attaining one or more of its biocriteria and is therefore listed as impaired, the department may conduct a source identification analysis to determine the cause. Source identification analyses will be prioritized as resources allow.

- In many cases the impairment may be addressed through habitat restoration.
- If the impairment is due to a pollutant which has a statewide criterion and the waterbody is attaining that criterion, the department may elect to establish a more-stringent site-specific criterion for the waterbody to be protective of the biota. If an SSC is established, permit limits may be adjusted accordingly if a permittee is discharging that pollutant.
- If the pollutant is a toxic or organoleptic (taste & odor) substance for which there is not a statewide criterion, the department may assign permit limits for that substance based on secondary values (106.05(1)(b)).

If we determine that biota is impaired due to P, but P is attaining criteria, is it required to list the waterbody as impaired for P, or would you do a more-stringent SSC first before listing as impaired?

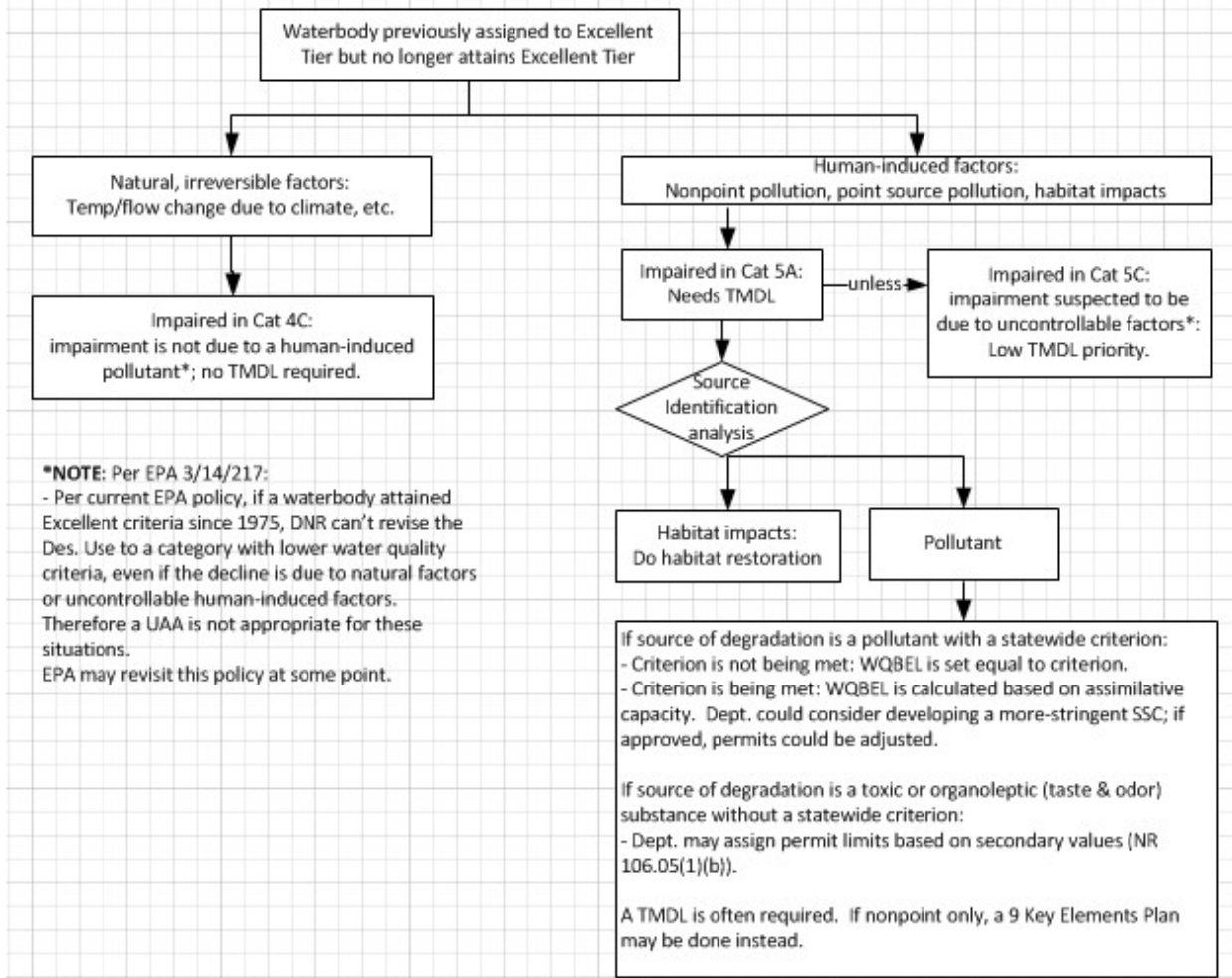
- For phosphorus discharges to waters listed as impaired for P (this is separate from whether or not it's attaining the criterion):
 - Mass limits would be required in the permit along with concentration limits (NR 217.14(1)). However, most permits for P already contain mass limits, so this is not likely to change permit limits.
 - New discharges of P to the water would be restricted except under certain conditions (NR 217.13(8)).

This is some DRAFT rule language that was included in an earlier version of our biocriteria package. Not sure this frames it well to address the concern.

NR 102.45 Applicability of biocriteria to permitted discharges. For a waterbody not attaining one or more biocriteria, the department may conduct a source identification assessment to determine the cause of non-attainment. If the department determines that one or more discharger with an individual WPDES permit contributes to the non-attainment, and if an EPA-approved TMDL or site-specific criterion is established, the department shall establish permit conditions in such WPDES permits at the time of permit issuance or reissuance. The department shall impose permit effluent limitations or effluent standards for discharges of pollutants on the discharge point of the permitted facility using the applicable protocols in chs. NR 106, 205.065 and 212.76* to ensure that the dischargers no longer cause or contribute to nonattainment of the biocriteria outside of a mixing zone.

* These sections of NR 205 & 212 are part of the "Rule Pkg 4" updates to the permit program regs.

This DRAFT flow chart illustrates some of the concepts discussed above. (next page)



Options for reducing potential impacts of Excellent Tier:

1. Is there a way to not list a water as impaired if it drops below Excellent Tier? Can it be labeled something else? This would have two benefits: potentially reducing impacts to permittees and also keeping these waters off the impaired list.
 - a. "Threatened" has a specific meaning that is not appropriate here. (is showing a trend that indicates it will be impaired at the next assessment cycle)
 - b. "Watch Water"? We used to use this term but are not really using it any more.
 - c. "Declining"? This could be a useful term that is not currently in use so far as I know.
2. If we do have to list it as impaired, and the source of impairment is determined to be a pollutant, would we have to list the pollutant as impaired if it is attaining its criterion? For instance, a stream has P criterion of 75; the stream is at 60 but has dropped below Excellent Tier. Would we list P as the pollutant or not? Or would we only list it as impaired for P if we first had an SSC approved at 60 or below?
 - a. We have previously determined that permittees would only have their limits changed if there was an approved SSC that is not being met or if there is a TMDL (see draft language earlier).
3. Under any scenario, is there a way to state that permit limits will not be affected if they are discharging the pollutant of concern but are a very minor source? (for instance if P has increased due to NPS in the watershed)
 - a. What about including a statement that says that if the discharge has stayed the same since the time that the waterbody was designated as Excellent (i.e. not increased), and other sources have increased, that the permit will not be changed?